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CENTRAL FAX CENTERIN THE UNITED STATES PATENT AND TRADEMARK OFFICE **SEP 09 2005**

Application No.: 10/090,888 Confirmation No.: 6489
Applicant(s): Bantz et al.
Filed: 3/4/2002
Art Unit: 2643
Examiner: Ni, Suhan
Title: Automatic Audio Adjustment System Based Upon a User's
Auditory Profile
Attorney Docket No.: YOR920010527US1
Customer No.: 29,683

Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Response To Restriction

Sir:

This is in response to the restriction office action mailed 08/09/2005 in regard to the above identified patent application. Applicants' attorney hereby elects Group I (claims 1-14 and 30-37) with traverse.

The examiner stated that the claims of Group I (claims 1-14 and 30-37) and Group II (claims 23-29) are related as combination and subcombination. This is incorrect. Claims 23-29 are method claims. Claims 1-14 and 30-37 are apparatus claims. Thus, the claims of Group I (claims 1-14 and 30-37) and Group II (claims 23-29) cannot be related as combination and subcombination.

The examiner stated that the inventions have acquired a separate status in the art as shown by their different classifications. However, there was no "different classifications" specified in the office action.

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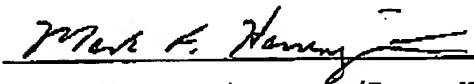
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In view of these two facts, the examiner is requested to reconsider his restriction.

In regard to claims 38-40, the examiner has pointed to no reason why those claims are directed to a separate independent and distinct invention from the invention of claims 1-14 and 30-37. Merely because claims 38-40 have a feature not originally in claims 1-14 and 30-37 does not mean they are necessarily separate independent and distinct inventions. The examiner is requested to specify why he believes claims 38-40 to be patentably distinct from the other claims in the application; deserving a separate patent as a different invention. Otherwise, applicant's attorney must challenge the restriction as being unsupported by USPTO procedures and regulations. Claims 38-40 do not appear to be independent and distinct from the invention of claims 1-14 and 30-37 such that two patents should be issued.

Should any unresolved issue remain, the examiner is invited to call applicants' attorney at the telephone number indicated below.

Respectfully submitted,


Mark F. Harrington (Reg. No. 31,686)

9/9/05
Date

Customer No.: 29683
Harrington & Smith, LLP
4 Research Drive
Shelton, CT 06484-6212
203-925-9400

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CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

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Ann O'Brien-Towich
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